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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
14/561,535	12/05/2014	Michael Bovino	127181.00007	4635

29880 7590 02/02/2018

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EXAMINER
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ART UNIT	PAPER NUMBER
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3711

NOTIFICATION DATE	DELIVERY MODE
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02/02/2018

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* MICHAEL BOVINO

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Appeal 2017-011826  
Application 14/561,535  
Technology Center 3700

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Before LYNNE H. BROWNE, THOMAS F. SMEGAL, and  
PAUL J. KORNICZKY, Administrative Patent Judges.

SMEGAL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant<sup>1</sup> seeks our review under 35 U.S.C. § 134(a) of the Examiner's rejections<sup>2</sup> of claims 1–20: (a) under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter in reciting instructions and guidelines pertaining to how one should act in the event of an occurrence; (b) under 35 U.S.C. § 112, second paragraph, as being

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<sup>1</sup> Appellant is the Applicant, DFX: Sound Vision, which, according to the Appeal Brief, is the real party in interest. Appeal Br. 3.

<sup>2</sup> Appeal is taken from the adverse decision of the Examiner as set forth in the Final Office Action, mailed March 4, 2016 ("Final Act.") and as modified in the Answer dated July 26, 2017 ("Ans."). We note that in the Answer, the Examiner withdrew the rejection of claims 2, 3, 6, 7, 9, 10, and 16–18 under 35 U.S.C. § 112, fourth paragraph. Ans. 2.

indefinite for reciting both an apparatus and the method steps of using the apparatus; and (c) under 35 U.S.C. § 102(b) as anticipated by Bouchard (US 7,025,687 B2, iss. Apr. 11, 2006). We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

### CLAIMED SUBJECT MATTER<sup>3</sup>

Claims 1, 13, and 15 are independent. Claim 1 is reproduced below and illustrates the claimed subject matter, with disputed limitation emphasized.

1. A system, comprising:

a management system comprising a computer having stored therein instructions to provide special effects associated with one or more events to one or more special effects components,

wherein a bowling mode feature of the management system allows a user to define and program, on a predefined schedule, a set of parameters related to *a status of each lane* in a bowling center, and

wherein, upon an occurrence of an event at a lane at the bowling center, the management system:

determines one or more special effects based on the occurrence of the event and the status of the lane defined by the bowling mode; and

provides the instructions to the one or more special effects components to effectuate the special effects associated with the one or more events.

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<sup>3</sup> The claims have been copied from those currently the subject of Appeal No. 2016-007539 (U.S. Application No. 13/902,349). Appeal Br. 4.

## ANALYSIS

### *Rejection of Claims 1–20 as Directed to Non-Statutory Subject Matter*

Appellant argues the claims subject to this rejection as a group.

Appeal Br. 10–12; Reply Br. 2–3. We select claim 1 as representative, with the remaining claims standing or falling with claim 1. 37 C.F.R.

§ 41.37(c)(1) (iv) (2014).

The Supreme Court has set forth “a framework for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts.” *Alice Corp. Pty. Ltd. v. CLS Bank Int’l.*, 134 S.Ct. 2347, 2355 (2014) (citing *Mayo Collaborative Servs. v. Prometheus Labs, Inc.*, 132 S Ct. 1289, 1294 (2012)). According to the Supreme Court’s framework, we must first determine whether the claims at issue are directed to one of those concepts (i.e., laws of nature, natural phenomena, and abstract ideas). *Id.* If so, we must secondly “consider the elements of each claim both individually and ‘as an ordered combination’ to determine whether the additional elements ‘transform the nature of the claim’ into a patent-eligible application.” *Id.* The Supreme Court characterizes the second step of the analysis as “a search for an ‘inventive concept’ — i.e., an element or combination of elements that is ‘sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.’” *Id.*

Addressing the first step of the *Alice* analysis, the Examiner determines that claims 1, 13, and 15 are directed to the “abstract idea and the concept itself of controlling any effect upon the occurrence of any event in a bowling center and attempts to foreclose upon that concept.” Final Act. 3. In other words, the claims are directed to a method of managing a computer-

implemented system for detecting events and controlling special effect components. In support of this determination, the Examiner finds that the “[s]teps such as ‘detecting’, ‘determining’ and ‘providing instructions’ are most broadly related to the gathering and manipulation of data associated with extra solution activity.” *Id.* The Examiner explains that to the extent that performing a special effect is a physical step, such performance is considered an extra solution activity more analogous to the display of data. *See id.*

Appellant first contends, “the Examiner has not examined each claim individually as required by the Interim Eligibility Guidance.” Appeal Br. 11. We note that we are not bound by the guidance provided to Examiners by the Office. Further, the guidance at issue is no longer in effect. As discussed *supra*, we apply the two-part analysis set forth in *Alice*. In addition, the Examiner explains that “[w]here the underlying invention was articulated as being directed to ineligible subject matter, each claim was [then] examined to find that it offered nothing substantially more,” pointing out that “[A]ppellant does not argue that any subsequent claim at any point adds more that would render it patentable.” Ans. 4.

Appellant continues by contending “the claims are not directed to an abstract idea as suggested by the Examiner,” since “the mere recitation of a computer device does not automatically mean that the claim is directed to an abstract idea.” Appeal Br. 11. Appellant also contends “each independent claim recites a management system and special effects components that collectively control special effect equipment to produce special effects.” *Id.*

However, the Examiner explains “the claims were evaluated under the Bilski factors that suggested the invention as claimed was not patent

eligible,” and “[A]ppellant’s remarks fail to refute any of the factors set forth in the ground for rejection.” Ans. 4. Furthermore, the Examiner points out that “the use of special effects in games and interior environments is known and conventional as is their implementation such that they are designed to be activated by some [predetermined] occurrence.” *Id.* As the Examiner reasons, “none of [Appellants’] arguments show that more is being recited than an underlying invention which is directed to the concept of allowing a computer to control the special effects in a bowling environment when predetermined events occur.” *Id.* at 5.

Similar data manipulation steps have been held ineligible under § 101. *See Content Extraction and Transmission LLC v. Wells Fargo Bank, National Ass'n*, 776 F.3d 1343, 1347 (Fed. Cir. 2014) (holding the concept of “1) collecting data, 2) recognizing certain data within the collected data set, and 3) storing that recognized data in a memory” abstract); *see also Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1370 (Fed. Cir. 2015) (“Intellectual Ventures I”) (concluding that customizing information and presenting it to users based on particular characteristics is abstract as well).

Our reviewing court further instructs us “[s]oftware can make non-abstract improvements to computer technology just as hardware improvements can, and sometimes the improvements can be accomplished through either route.” *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1335 (Fed. Cir. 2016). Thus, we are further instructed that we must determine if “the claims are directed to an improvement to computer functionality versus being directed to an abstract idea, even at the first step of the *Alice* analysis.” *Id.* Here, however, the limitations at issue are not directed to an

improvement of a computer's functionality. Rather, the claims are directed to the abstract idea of using a computer to manage a system for detecting events and controlling special effect components.

Having determined that claim 1 is directed to an abstract idea, we must determine whether the additional elements of the claim transforms it into patent-eligible subject matter. As discussed *supra*, the Examiner determines that at most the data collection, manipulation, and dissemination steps pertain to post solution activity. *See* Final Act. 3.

In response, Appellant contends that “each independent claim recites a management system and special effects components that collectively control special effect equipment to produce special effects,” and “are directed to patent eligible subject matter at least because they recite applying an alleged judicial exception with, or by use of, a particular machine (i.e., the management system and special effects components).” Appeal Br. 11–12. Appellant also contends “there is no rule against claims being broadly written to encompass different embodiments.” Reply Br. 3.

However, we agree with the Examiner that “none of [Appellant's] arguments show that more is being recited than an underlying invention which is directed to the concept of allowing a computer to control the special effects in a bowling environment when predetermined events occur.” Ans. 5. As the Examiner also explains, “it appears a ‘centralized management system’ could be so broad as to read on any system for ‘check-in to check-out’ of the bowlers.” *Id.*

Based on the foregoing, we sustain the Examiner's decision rejecting claims 1–20 as being directed to non-statutory subject matter.

*Rejection of Claims 1–20 under 35 U.S.C. § 112, second paragraph,  
as being indefinite*

The Examiner finds that “[w]hile the claims recite structure suggesting an apparatus, they recite some steps consistent with a process.” Final Act. 5. Based on this finding, the Examiner determines that “a single claim which claims both an apparatus and the method steps of using the apparatus is indefinite.” *Id.* (citing *In re Katz Interactive Call Processing Patent Litigation*, 639 F.3d 1303, (Fed. Cir. 2011)). However, as the Examiner explains, in that case confusion was caused because one of the limitations was directed to actions of users of the system not to actions of the system itself. *See id.* at 5–6. This confusion rendered the claim indefinite.

The Examiner does not adequately explain how similar confusion exists in this case. For example, as Appellant explains, claims 1 and 13 “each recites an apparatus and functions that are performed by the apparatus,” and “functional language does not render a claim improper.” Appeal Br. 12. The Examiner does not identify, nor do we discern, any limitations directed to actions performed by something other than the computer or management system. Thus, the Examiner’s reliance on *In re Katz* is misplaced. For this reason, we do not sustain the Examiner’s rejection of claims 1–20 under 35 U.S.C. § 112, second paragraph.

*Rejection of Claims 1–20 under 35 U.S.C. § 102(b) as anticipated by  
Bouchard*

The Examiner finds that “Bouchard shows a bowling center management system 16 with a control system (abstract, ln. 5) that is capable of determining a special event such as 40 of fig. 9 and effecting an audio



effect col. 10, ln. 39.” Final Act. 9. More specifically, the Examiner determines that “within the broadest suggestion of Bouchard [is] to allow [a] ‘user customized entertainment system.’ (col. 1, ln. 15).” *Id.* Furthermore, the Examiner reasons that “[t]he term ‘status of the lane’ is so broad that the status of the ‘pinfall’ (col. 10, ln. 40) in Bouchard can be a status of the lane meeting the limitations of the claim.” *Id.*

In response, Appellant acknowledges that “Bouchard generally discloses a bowling center control system (18),” and “allows for a bowler to customize the audiovisual, lighting and sound characteristics for his particular lane and/or bowling game in accordance with his taste,” but argues that “Bouchard fails to disclose and/or suggest a bowling mode feature of the management system that allows a user to define and program, on a predefined schedule, a set of parameters related to a status of each lane in a bowling center.” Appeal Br. 14–15; Reply Br. 4. Appellant continues by arguing, “the user of Bouchard is not allowed to define and program, on a predefined schedule, a set of parameters related to *a status of each lane in a bowling center.*” Appeal Br. 15. Appellant also contends that “Bouchard does not mention using a lane status as criteria for determining one or more special effects that is to be played in accordance with the bowler’s selected entertainment style.” *Id.*; Reply Br. 4.

We determine the scope of the claims in a patent application by giving claims “their broadest reasonable interpretation consistent with the [S]pecification” and “in light of the specification as it would be interpreted by one of ordinary skill in the art.” *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citations omitted). “Construing claims broadly during prosecution is not unfair to the applicant . . . because the

applicant has the opportunity to amend the claims to obtain more precise claim coverage.” *Id.*

Appellant has not pointed to any lexicographic definition in the Specification of the phrase “status of each lane,” or identified any other disclosure therein that precludes the Examiner from construing “that the status of the ‘pinfall’ (col. 10, ln. 40) in Bouchard can be a status of the lane meeting the limitations of the claim,” and reasoning that “[e]ven, if one could effectively argue that Bouchard fails to show [a] user defined program, as opposed to a predefined program argued by [Appellant], allowing users to select and customize preferences in games [is] known.” Final Act. 9. As the Examiner concludes, “A bowler programming his lane in accordance with his style which is linked to events is considered a set of parameters related to a status of each lane in the bowling center as recited in the plain language of the claim.” Ans. 9.

For the foregoing reasons, we discern no error in the Examiner’s findings and agree that Bouchard anticipates claims 1–20.

#### DECISION

We AFFIRM the Examiner’s rejections of claims 1–20 under 35 U.S.C. § 101 as being directed to non-statutory subject matter and under 35 U.S.C. § 102(b) as anticipated by Bouchard.

We REVERSE the Examiner’s rejection of claims 1–20 under 35 U.S.C. § 112, second paragraph, as being indefinite.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED